

**SERIAL 09122 IGA RECORDS DESTRUCTION SERVICES**

**DATE OF LAST REVISION: November 24, 2010 CONTRACT END DATE: November 30, 2011**

**CONTRACT PERIOD BEGINNING DECEMBER 02, 2009  
ENDING NOVEMBER 30, ~~2010~~ 2011**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **RECORDS DESTRUCTION SERVICES**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Arizona State Procurement Contract ADSPO10-00000079.. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at: [http://www.maricopa.gov/materials/Awarded\\_Contracts/search.asp](http://www.maricopa.gov/materials/Awarded_Contracts/search.asp).

**Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 9626902.**

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

## **Records Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and Conditions**

Page 1 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c)

### **2003 State of Arizona Department of Administration, Enterprise Procurement Services SPECIAL TERMS AND CONDITIONS**

#### **1. Contract Term:**

The term of any resultant contract will commence on the date of award and will continue for one year unless canceled, terminated or extended as otherwise provided herein.

#### **2. Contract Type (Firm):**

Firm fixed price indefinite quantity.

#### **3. Contract Extension:**

The contract shall not bind nor purport to bind, the State for any contractual commitment in excess of the original contract period. The State shall have the right, in accordance with A.R.S. §41-2636, to extend the contract for four (4) one-year periods or a portion thereof. If the State exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the extension period.

#### **4. Price Adjustment (Annual):**

The State Procurement Office may review a fully documented request for a price increase only after the contract has been in effect for one (1) year. A price increase adjustment shall only be considered at the time of a contract extension and shall be a factor in the extension review process. In accordance with A.R.S. §41-2636, the Arizona State Set Aside Committee shall determine whether the requested price increase or an alternate option is in the best interest of the State.

The Contractor shall offer the State a price reduction on the contract product(s) concurrent with a published price reduction made by the manufacturer to other customers.

The price increase adjustment, if approved, will be effective upon the date of the contract extension. Price reductions will become effective upon acceptance by the State.

#### **5. Eligible Agencies (Statewide):**

This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by A.R.S. §41-2632.

#### **6. Licenses:**

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

#### **7. Billing:**

All billing notices shall include delivery time and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number, if applicable. Any contract release order issued by the requesting agency shall refer to the contract number and line item number(s).

#### **8. Offshore Performance of Work Prohibited:**

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

## **Records Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and Conditions**

Page 2 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

#### 9. Federal Immigration and Nationality Act:

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV. The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

#### 10. Indemnification Clause:

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

#### 11. Insurance Requirements:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

##### **1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate \$1,000,000

Products – Completed Operations Aggregate \$ 500,000

Personal and Advertising Injury \$ 500,000

## ***Records Shredding & Destruction Services – SA State Contract #***

### ***ADSP010-00000079 Terms and Conditions***

Page 3 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

- Blanket Contractual Liability – Written and Oral \$ 500,000

- Fire Legal Liability \$ 25,000  
Each Occurrence \$ 500,000

a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.***

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

## **2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$500,000

The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.***

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

## **3. Worker's Compensation and Employers' Liability**

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$100,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources. ***Records Shredding & Destruction Services – SA State Contract #***

***ADSP010-00000079 Terms and Conditions***

Page 4 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(State of Arizona Department Representative's Name & Address)** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State of Arizona Department Representative's Name and Address)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

12. Government Procurement; E-Verify Requirement (A.R.S. §41-4401):

The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.")

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.

Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract. **Records Shredding & Destruction**

**Services – SA State Contract # ADSP010-00000079 Terms and**

**Conditions**

Page 5 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty as stated above.

Questions about E-Verify see website below:

**<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=6a0988e60a405110VgnVCM1000004718190aRCRD&vgnextchannel=6a0988e60a405110VgnVCM100004718190aRCRD>**

13. Sudan or Iran Investments (Compliance with A.R.S. 35–393 and 35–391):

In accordance with A.R.S. 35–393, the contractor hereby certifies that the contractor does not have scrutinized business operations in Iran.

In accordance with A.R.S. 35–391, the contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan.

14. IT 508 Compliance:

Any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. 41-2531 and 2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities. Any exceptions shall be declared in writing in the offer.

15. Non-Exclusive Contract:

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agencies delegated authority) or by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

16. Cancellation:

The State reserves the right to cancel the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as in any of the following:

The Contractor provides personnel that do not meet the requirements of the contract. The Contractor fails to perform adequately the services required in the contract. The Contractor attempts to impose on the State, personnel, which are of an unacceptable quality. The Contractor fails to furnish the required product within the time stipulated in the contract. The Contractor fails to make progress in the performance of the requirements of the contract and/or gives the State a positive indication that the Contractor will not or cannot perform to the requirements of the contract. If the Contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the State may cancel the contract. If the State cancels the contract pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

### ***Records Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and***

**Conditions** Page 6 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

17. Confidentiality of Information:

The contractor shall treat all information and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract, as confidential information to the extent that confidential treatment is provided under State and federal law, and shall not use any information so obtained in any manner

except as necessary for the proper discharge of its obligations and protection of its rights hereunder.

18. HIPAA:

State of Arizona and Business Associate agree to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ('HIPAA'), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the 'CFR'). In the event of conflicting terms or conditions, this Addendum shall supersede the Contract.

1. Definitions. Capitalized terms not otherwise defined in the Contract shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference. 2. Use and Disclosure of Protected Health Information. Business Associate shall use and/or disclose Protected Health Information ('PHI') only to the extent necessary to satisfy Business Associate's obligations under the Contract. 3. Prohibition on Unauthorized Use or Disclosure of PHI. Business Associate shall not use or disclose any PHI received from or on behalf of State of Arizona, except as permitted or required by the Contract, as required by law or as otherwise authorized in writing by State of Arizona. Business Associate shall comply with the applicable provisions of: (a) Title 45, Part 164 of the CFR; (b) State laws, rules and regulations applicable to PHI not preempted pursuant to Title 45, Part 160, Subpart B of the CFR or the Employee Retirement Income Security Act of 1974 ('ERISA') as amended; and (c) State of Arizona's health information privacy and security policies and procedures. 4. Business Associate's Operations. Business Associate may use PHI it creates or receives for or from State of Arizona only to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose such PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only if: (a) The disclosure is required by law; or (b) Business Associate obtains reasonable assurances from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall: (i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and (ii) Notify Business Associate (who shall in turn promptly notify State of Arizona) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached. 5. Data Aggregation Services. Business Associate may use PHI to provide Data Aggregation Services related to State of Arizona's Health Care Operations.

6. PHI Safeguards. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the improper use or disclosure of any PHI received from or on behalf of State of Arizona. 7. Electronic Health Information Security and Integrity. On or before April 20, 2005, Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d-2(d) of the United States Code and Title 45, Part 164.314 (a) (2) of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted Health Information received from or on behalf of State of Arizona pertaining to an individual. Business Associate shall document and keep these security measures current. 8. Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of State of Arizona, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the CFR. 9. Subcontractors and Agents.

Business Associate shall require each of its subcontractors or agents to whom **Records**

**Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and Conditions**

Page 7 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

Business Associate may provide PHI received from, or created or received by Business Associate on behalf of State of Arizona to agree to at least the same obligations to protect such PHI as are imposed on Business Associate by the Contract. 10. Access to PHI. Business Associate shall provide access, at the request of State of Arizona, to PHI in a Designated Record Set, to State of Arizona or, as directed by State of Arizona, to an individual to meet the requirements under Title 45, Part 164, Subpart E, Section 164.524 of the CFR and applicable state law. Business Associate shall provide access in a reasonable time and manner consistent with the time and manner set forth in State of Arizona's health information privacy and security policies and procedures. 11. Amending PHI. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that State of Arizona directs or agrees to pursuant to Title 45, Part 164, Subpart E, Section 164.526 of the CFR at the request of State of Arizona or an Individual, and in a reasonable time and manner consistent with the time and manner set forth in State of Arizona's health information privacy and security policies and procedures. 12. Accounting of Disclosures of PHI. (a) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for State of Arizona to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR. (b) Business Associate agrees to provide State of Arizona or an individual, in a reasonable time and manner consistent with the time and manner set forth in State of Arizona's health information privacy and security policies and procedures, information collected in accordance with Section 11(a) above, to permit State of Arizona to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR. 13. Access to Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of State of Arizona available to DHHS or its designee for the purpose of DHHS determining State of Arizona's compliance with the Privacy Rule. 14. Reporting. Business Associate shall report to State of Arizona any use or disclosure of PHI not authorized by the Contract, by law, or in writing by State of Arizona of which it becomes aware. Business Associate shall make the report to State of Arizona's Privacy Official within five (5) business days after Business Associate learns of such unauthorized use or disclosure. Business Associate's report shall at least: (a) identify the nature of the unauthorized use or disclosure; (b) identify the PHI used or disclosed; (c) identify who made the unauthorized use or received the unauthorized disclosure; (d) identify what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; (e) identify what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure; and (f) provide such other information as reasonably requested by State of Arizona's Privacy Official. 15. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract. 16. Termination for Cause. Upon State of Arizona's knowledge of a material breach by Business Associate of the terms of this Addendum, State of Arizona shall:

(a) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate if Business Associate does not cure the breach or end the violation within the time specified by State of Arizona. (b) Immediately terminate the Contract if Business Associate has breached a material term of the Contract and cure is not possible. (c) If neither termination nor cure is feasible, State of Arizona shall report the violation to DHHS. 17. Return or Destruction of Health Information. (a) Except as provided in Section 17(b) below, upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate shall return to State of Arizona or destroy all PHI received from State of Arizona, or created or received by Business Associate on behalf of State of Arizona. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Except as provided in

Section 17 (b) below, Business Associate shall retain no copies of the PHI. ***Records Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and Conditions***



(b) In the event that Business Associate reasonably determines that returning or destroying the PHI is not feasible, Business Associate shall extend the protections of the Contract to such PHI and limit further uses and disclosure of PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI. 18. Obligation of State of Arizona. (a) State of Arizona shall provide Business Associate with the notice of privacy practices that State of Arizona produces in accordance with Title 45, Part 164, Subpart E, Section 164.520, as well as any changes to that notice. (b) State of Arizona shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI if such changes affect Business Associate's permitted or required uses and disclosures. (c) State of Arizona shall notify Business Associate, in writing, of any restriction to the use of disclosure of PHI that State of Arizona has agreed to in accordance with Title 45, Part 164, Subpart E, Section 164.522. (d) State of Arizona acknowledges that it shall provide to, or request from, Business Associate only the minimum PHI necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder. (e) State of Arizona shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by State of Arizona. 19. Automatic Amendment. Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, the Contract shall automatically amend such that the obligations imposed on Business Associate as a Business Associate remain in compliance with such regulations.

#### 19. Usage Reports:

The Contractor shall furnish the state a usage report delineating the acquisition activity governed by the contract.

The format of the report shall be approved by the State and shall disclose the quantity and dollar value of each contract item by individual purchasing unit.

The Usage report shall be submitted at the end of each three month period of the contract term and is due within fifteen (15) days of each three month period's end date.

### ***Records Shredding & Destruction Services – SA State Contract # ADSP010-00000079 Terms and Conditions***

Page 9 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

## UNIFORM TERMS AND CONDITIONS

**1. Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 "*Attachment*" means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 "*Contract*" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3 "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 "*Contractor*" means any person who has a Contract with the State.

1.5 "*Days*" means calendar days unless otherwise specified.

1.6 "*Exhibit*" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 "*Gratuity*" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 "*Materials*" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 "*Procurement Officer*" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 "*Services*" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12 "*State*" means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 "*State Fiscal Year*" means the period beginning with July 1 and ending June 30,

### **2. Contract Interpretation**

#### **2.1 Arizona Law:**

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

#### **2.2 Implied Contract Terms:**

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it. ***Records Shredding & Destruction Services – SA State***

***Contract # ADSP010-00000079 Terms and Conditions*** Page 10 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

### 2.3 Contract Order of Precedence:

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;

2.3.2 Uniform Terms and Conditions;

2.3.3 Statement or Scope of Work;

2.3.4 Specifications;

2.3.5 Attachments;

2.3.6 Exhibits;

2.3.7 Documents referenced or included in the Solicitation.

### 2.4 Relationship of Parties:

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

### 2.5 Severability:

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

### 2.6 No Parole Evidence:

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

### 2.7 No Waiver:

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## **3. Contract administration and operation.**

### 3.1 Records:

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

### 3.2 Non-Discrimination:

The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

### 3.3 Audit:

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

### 3.4 Facilities Inspection and Materials Testing:

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall **Records Shredding & Destruction Services – SA State**

**Contract # ADSP010-00000079 Terms and Conditions** Page 11 of 17 These pages are

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also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

### 3.5 Notices:

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

### 3.6 Advertising, Publishing and Promotion of Contract:

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

### 3.7 Property of the State:

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

### 3.8 Ownership of Intellectual Property:

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

## 4. Costs and Payments

### 4.1 Payments:

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

### 4.2 Delivery:

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

### 4.3 Applicable Taxes:

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes. **Records**

## **Shredding & Destruction Services – SA State Contract # ADSP010-**

## **00000079 Terms and Conditions**

Page 12 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State Fiscal Year:

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the Current State Fiscal Year:

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the, contractor

4.5.2 Cancel the Contract

4.5.3 Cancel the contract and re-solicit the requirements.

## **5. Contract changes**

5.1 Amendments:

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts:

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation:

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## **6. Risk and Liability**

6.1 Risk of Loss:

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

## ***Records Shredding & Destruction Services – SA State***

**Contract # ADSP010-00000079 Terms and Conditions** Page 13 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

## 6.2 Indemnification:

6.2.1 Contractor/Vendor Indemnification (Not Public Agency): The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2 Public Agency Language Only: Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."

## 6.3 Indemnification - Patent and Copyright:

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

## 6.4 Force Majeure:

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

## **Records Shredding & Destruction Services – SA State Contract #**

**ADSP010-00000079 Terms and Conditions** Page 14 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations:

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

**7. Warranties**

7.1 Liens:

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality:

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness:

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing:

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Year 2000:

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State

**Records Shredding & Destruction Services – SA  
State Contract # ADSP010-00000079 Terms and Conditions**

Page 15 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

#### 7.6 Compliance with Applicable Laws:

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

#### 7.7 Survival of Rights and Obligations after Contract Expiration or Termination:

7.7.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

### 8. State's Contractual Remedies

#### 8.1 Right to Assurance:

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

#### 8.2 Stop Work Order:

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

#### 8.3 Non-exclusive Remedies:

The rights and the remedies of the State under this Contract are not exclusive.

#### 8.4 Nonconforming Tender:

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable **Records Shredding & Destruction Services – SA State**

**Contract # ADSP010-00000079 Terms and Conditions**

Page 16 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services



termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

#### 8.5 Right of Offset:

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

### 9. Contract Termination

#### 9.1 Cancellation for Conflict of Interest:

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

#### 9.2 Gratuities:

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

#### 9.3 Suspension or Debarment:

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

#### 9.4 Termination for Convenience:

The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

#### 9.5 Termination for Default:

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the **Records Shredding & Destruction Services – SA State**

**Contract # ADSP010-00000079 Terms and Conditions** Page 17 of 17 These pages are maintained by Arizona Enterprise Procurement Services. SPIRIT Help Desk (602) 542-7600 or please send comments or questions to the Site Administrator (c) 2003 State of Arizona Department of Administration, Enterprise Procurement Services

Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination:

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## **10. Contract Claims**

10.1 Contract Claims:

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## **11. Arbitration**


11.1 Arbitration:

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

## **12. Comments Welcome**

12.1 Comments Welcome:

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 104, Phoenix, Arizona, 85007.

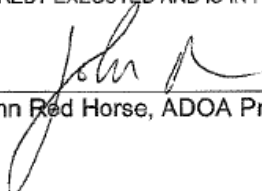
	<b>Contract Amendment</b>		<b>STATE PROCUREMENT OFFICE</b>  100 N. 15 <sup>th</sup> Avenue Suite 201  Phoenix, AZ 85007
	Contract No. ADSP010-00000079	PAGE 1	
	Amendment No.: One (1)		

<b>CONTRACT AGENCY:</b>  Arizona State Procurement Office  100 N. 15 <sup>th</sup> Avenue Suite 201 Phoenix, AZ 85007  <b>AGENCY CONTACT:</b> John Red Horse <b>FAX NO.:</b> (602) 542-5508 <b>PHONE NO.:</b> (602) 542-9127	<b>CONTRACTOR:</b>  Centers for Habilitation  215 W. Lodge Dr.  Tempe, AZ 85283  <b>CONTACT:</b> Rochelle Hume <b>FAX NO.:</b> (480) 730-5214 <b>PHONE NO.:</b> (480) 838-8111
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**CONTRACT IS AMENDED AS FOLLOWS:**

In accordance with the Special Terms and Conditions, section titled "Contract Extension," the contract is hereby amended as follows:

The contract is extended from December 1, 2010 through November 30, 2011.

ALL OTHER CONTRACT TERMS AND CONDITIONS SHALL REMAIN THE SAME.
CONTRACT AMENDMENT ONE IS HEREBY EXECUTED AND IS IN FULL EFFECT AND FORCE AS OF <b>November 15, 2010.</b>  <div style="text-align: center;">   <hr style="width: 40%; margin: 0 auto;"/>         John Red Horse, ADOA Procurement Manager       </div> <div style="text-align: center; margin-top: 20px;">NAME AND TITLE</div>